

BILL NO. R-96-11- 38

RESOLUTION NO. R-84-96

**A RESOLUTION APPROVING THE
PURCHASE OF CERTAIN REAL ESTATE
FOR THE CITY OF FORT WAYNE STREET
LIGHT MAINTENANCE DEPARTMENT.**

WHEREAS, the City of Fort Wayne, through its Division of Public Works, desires to purchase property located at 325 Murray Street, specifically described in Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the City of Fort Wayne, through its Division of Public Works, desires to purchase this property in order to relocate the City's Street Light Maintenance Department; and

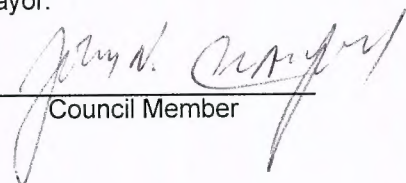
WHEREAS, the purchase price for the property is One Hundred Ninety-Two Thousand Five Hundred and no/100 Dollars (\$192,500.00.)

WHEREAS, Sec. 37-19 of the City of Fort Wayne Code of Ordinances, requires the Common Council approval of any purchase of real estate by the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA:**

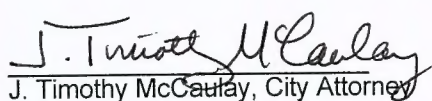
SECTION 1. The purchase of real estate by the City of Fort Wayne through its Division of Public Works, described in Exhibit "A," is hereby approved and agreed to. The appropriate officials of the City are hereby authorized to execute all documents necessary to accomplish said purchase.

SECTION 2. This Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.



Council Member

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCauley, City Attorney

The Allen County Indiana
Bar Association, Inc.

AGREEMENT TO PURCHASE IMPROVED REAL ESTATE

As

TO: Korte Brothers Inc.

("Seller"). Dated: _____

The undersigned ("Buyer") offer(s) to purchase for \$ 192,500.00

real estate, the address of which is 325 Murray Street

Fort Wayne

Allen

County, Indiana, and the legal description of which is _____

Such real estate, including

the improvements and fixtures described in Section 6, is called the "Real Estate". This offer is made subject to the following provisions:

Section 1. MANNER OF PAYMENT OF PURCHASE PRICE. [Mark appropriate box] [Rev. 9/96]

☒ 1.01. **Cash.** The Purchase Price shall be paid in cash.

☐ 1.02. **Cash with New Mortgage.** The Purchase Price shall be paid by Buyer's cash and funds from a new (conventional) (FHA) (VA) [Strike two] first mortgage loan ("Loan") to be obtained by Buyer. The following provisions shall apply:

- (a) Within _____ days after this Agreement becomes effective, Buyer shall apply for the Loan, and then proceed promptly and in good faith to meet the lender's requirements for a commitment or other indication that the lender will make the Loan to Buyer ("Commitment").
- (b) Buyer shall have _____ days after this Agreement becomes effective within which to obtain a Commitment for a Loan having terms at least as favorable to Buyer as the following:
 - (1) principal amount of _____% of the Purchase Price;
 - (2) (fixed) (adjustable) [Strike one] interest rate.
 - (3) [interest rate of _____%] [Market Rate] [Strike one] "Market Rate" is the lowest interest rate usually available for a mortgage loan with the same terms as stated in this Section 1.02; by the same lender to which Buyer applies for the Loan.
If neither provision in this Section 1.02(b)(3) is stricken, the Market Rate applies.
 - (4) amortization over _____ years; and
 - (5) discount points ("Points") charged by a lender in connection with the Loan which total not more than _____% of the Loan.
- (c) Of the Points, Seller shall pay _____ Points or \$ _____, whichever is less. Buyer shall pay the remaining Points.
- (d) If Buyer satisfies the requirements stated in Section 1.02(a), but is unable to obtain within the number of days stated in Section 1.02(b), a Commitment having terms at least as favorable to Buyer as there stated, either party may terminate this Agreement, unless Section 1.02(e) or (f) applies;
- (e) If a specific interest rate is stated in Section 1.02(b)(3), and Buyer can "lock in" that rate where Buyer applies for the Loan, but Buyer does not do so, Buyer may not terminate this Agreement if the interest rate for the Loan is greater than such stated rate.
- (f) Should the Commitment be conditioned upon the sale or settlement of any other property or funds to be obtained that was not disclosed in this Agreement, Buyer may not terminate this Agreement.
- (g) If Buyer fails to satisfy the requirements stated in Section 1.02(a), then Seller may seek the remedies available under Sections 14 and 20.
- (h) See Section 15.01 on the reverse side for additional provisions which apply here.

☐ 1.03. **Cash with Assumption of Existing Mortgage.** The Purchase Price shall be paid by Buyer in cash less the unpaid principal balance of an existing mortgage loan on the Real Estate. Buyer shall assume and agree to pay such mortgage loan and perform its terms. The following provisions shall apply:

- (a) Buyer has been informed that the holder of such mortgage loan is _____, and that the unpaid principal balance is approximately \$ _____ as of the date of this offer.
- (b) Seller (may) (may not) [Strike one] require that the lender release Seller from liability for the existing mortgage loan. Of any fee charged by the lender for releasing Seller, (Seller) (Buyer) [Strike one] shall pay no more than \$ _____; and the other party shall pay any balance of such fee.
- (c) If the lender charges any other fee(s) for assumption of the mortgage loan, Buyer shall pay such fee(s).
- (d) See Section 15.02 on the reverse side for additional provisions which apply here.

☐ 1.04. **Contract for Conditional Sale/Purchase Money Mortgage.**

☐ (a) **Contract for Conditional Sale.** The parties shall execute and deliver to each other, a Contract for Conditional Sale of Real Estate ("Contract") in the form approved, as of the date this Agreement becomes effective, by The Allen County Indiana Bar Association, Inc. The Contract shall contain the provisions described in Section 1.04(c). The Contract shall also provide that the Real Estate (may) (may not) [Strike one] be leased or occupied by persons other than Buyer. Seller shall provide Buyer with evidence of title (before execution of the Contract) (when the Contract is fully performed) [Strike one]. See Section 16.03 on the reverse side for additional provisions which apply here.

☐ (b) **Purchase Money Mortgage.** Buyer shall execute and deliver to Seller a promissory note ("Note") and a purchase money mortgage ("Mortgage") in the forms approved, as of the date this Agreement becomes effective, by The Allen County Indiana Bar Association, Inc. The Note and the Mortgage shall contain the provisions described in Section 1.04(c). Buyer agrees Seller may obtain an ALTA Loan Policy in the principal amount of the Mortgage. See Section 16.03 on the reverse side for additional provisions which apply here.

(c) The Contract, or the Note and the Mortgage, shall provide for the following:

- (1) a cash down payment of \$ _____
- (2) Payment of the unpaid balance of the Purchase Price by monthly installments of principal and interest of not less than \$ _____, including an annual interest rate of _____%, calculated monthly.
- ☐ (3) A "balloon payment", by specifying the time the Purchase Price is to be paid in full, which is _____. [Mark box if this provision applies.]
- ☐ (4) An appropriate escrow for Buyer's payment of taxes and insurance. [Mark box if this provision applies.]

Section 2. TAXES, ASSESSMENTS AND ASSOCIATION DUES. [Rev. 9/96]

2.01. [Mark (a) or (b)]

- ☐ (a) Buyer shall assume and pay real estate taxes payable in (May) (November) [Strike one], 199_____, and all subsequent taxes. At or before closing, Seller shall pay all real estate taxes payable before that date.
- ☒ (b) The real estate taxes shall be prorated. Seller shall pay real estate taxes which are payable during the year in which closing occurs, and taxes payable during the succeeding year, prorated to the date of closing. Buyer shall assume and pay all subsequent taxes.
- (c) If at the time of closing the tax bill for the Real Estate for the succeeding year has not been issued, taxes payable by either party shall be computed based on the last tax bill available to the closing agent. **WARNING: The succeeding year's tax bill for recently constructed homes may greatly exceed the last tax bill available to the closing agent.**

2.02. Seller shall pay any assessments or charges upon or applying to the Real Estate for public improvements or services which, on the date of closing, have been or are being constructed or installed on or about the Real Estate, or are serving the Real Estate. If any such improvement has been or is being constructed, but an assessment for it has not yet been made, Seller shall pay an amount reasonably estimated by the applicable governmental agency to be equal to the anticipated assessment. Buyer shall assume and pay all other assessments or charges for such public improvements and charges. SELLER WARRANTS that Seller has not received notice of any planned improvement for which an assessment reasonably might be made, other than as is disclosed by the Seller to Buyer in this Agreement.

2.03. If the Real Estate is located in an area for which a community association ("Association") has been, or is to be, formed, and membership in the Association is required, Buyer will accept delivery of the Deed or the Contract with knowledge of the membership requirement. Membership in the Association may require (among other things) payment of dues (whether regular or special, and however payable—annually or otherwise), maintenance fees and other assessments, any of which would become a lien against the Real Estate, if unpaid. Such dues, fees and assessments are called "Association Dues". Buyer has been informed that Association Dues payable by the owner of the Real Estate in the calendar year in which closing is to occur are \$ N/A. Association Dues payable in the calendar year in which closing occurs shall be paid by the parties pro rata, according to the date of closing. Buyer shall assume and pay all subsequent Association Dues.

2.04. Payment by Seller of Seller's obligations under Section 2 shall either be made or provided for at closing.

Section 3. FLOOD DESIGNATION OR AREA. [Mark 3.01 or 3.02]

☐ 3.01. Buyer requires that the Real Estate not be located in an area which requires flood insurance, or which is subject to building or use limitations by reason of such location. If the Real Estate is so located, Buyer may terminate this Agreement.

☐ 3.02. Buyer may not terminate this Agreement if the Real Estate is located in an area requiring flood insurance or is subject to building or use limitations by reason of such location. Buyer agrees to pay all premiums charged for flood insurance from and after the date of closing.

THE FOLLOWING PROVISIONS APPLY TO THIS AGREEMENT

Section 15. ADDITIONAL PROVISIONS REGARDING PAYMENT OF PURCHASE PRICE. [Rev. 9/96]

15.01. Payment of Purchase Price By Cash With New Mortgage.

- (a) If Buyer obtains a Commitment for a federally insured or guaranteed mortgage loan (for example: FHA or VA), and if the Purchase Price exceeds the amount of the Loan appraisal, Buyer may terminate this Agreement.
- (b) If repairs are required in connection with a federally insured or guaranteed mortgage loan, Seller may elect to pay for such repairs, or terminate this Agreement. However, this Agreement shall not terminate if Buyer assumes the cost of such repairs and so notifies Seller in writing within 5 days after receipt of notice of Seller's election to terminate.
- (c) Upon written request from Seller or Listing Broker, Buyer shall inform the inquiring person of the progress of the Loan application. In addition, such person shall have the right to inquire of the lender concerning such progress, and Buyer authorizes the lender to disclose such progress and the terms being considered by the lender for a Loan. Further, Seller or Listing Broker may assist a lender in processing an application, but such action shall not prejudice or adversely affect the Loan application.
- (d) Upon written request from Seller or Listing Broker, Buyer shall give such person a copy or summary of the terms of Buyer's Loan application and a copy of the Commitment.
- (e) Buyer shall pay all Loan origination, inspection and underwriting fees, and all other closing expenses and costs imposed by the lender in giving Buyer Loan proceeds to purchase the Real Estate, except those which Seller is required to pay by law, and except the Points and closing fee Seller has agreed to pay under Sections 1.02(c) and 19.08.
- (f) If Buyer having financing available upon terms at least as favorable as those stated in Section 1.02(b), fails to purchase the Real Estate, and Seller has not breached this Agreement, Seller may seek the remedies available under Sections 14 and 20.

15.02. Payment of Purchase Price By Cash With Assumption of Existing Mortgage.

- (a) Immediately after this Agreement becomes effective, Buyer shall apply to the lender for assumption of the existing mortgage loan, and proceed promptly and in good faith to meet the lender's requirements for assumption, subject to Section 15.02(b).
- (b) Buyer understands that assumption of the existing mortgage loan may be subject to consent of the lender. As a condition to giving consent, the lender may require an interest rate higher than the existing rate, or other concession. Buyer shall have 15 days from the date this Agreement becomes effective to obtain from the lender assumption terms satisfactory to Buyer, and to give Seller notice that such terms have been obtained. If Buyer fails to timely do so, either party may terminate this Agreement.
- (c) If the existing mortgage loan neither allows the lender to vary its terms nor requires the lender's consent for assumption, Buyer's rights to obtain satisfactory assumption terms and to terminate this Agreement under Section 15.02(b) shall not apply.
- (d) At closing, Seller shall assign to Buyer amounts held by the lender in escrow; and Buyer shall pay Seller a sum equal to such amounts, subject to any necessary adjustments for accrued expenses.

Section 16. ADDITIONAL PROVISIONS REGARDING EVIDENCE OF TITLE.

16.01. Buyer shall have a reasonable time before closing to have the evidence of title examined. Seller shall have a reasonable time to correct any title defect.

16.02. Title to the Real Estate shall not be considered unmarketable by reason of any of the following matters, and Buyer shall accept title subject to them: (a) recorded building restrictions, restrictive covenants, conditions and other use restrictions ("Restrictions") applicable to the Real Estate; and (b) recorded or visible easements for public roads, utilities, or public purposes ("Easements"), upon which existing improvements on the Real Estate do not encroach; PROVIDED, however, that at the time of closing: (1) there is no existing violation of the Restrictions; (2) there is no provision of reversion, re-entry, or forfeiture of title by reason of violation of the Restrictions; and (3) the Restrictions and Easements will not materially interfere with Buyer's intended use of the Real Estate as stated in Section 5.01, or as otherwise provided in this Agreement.

16.03. Notwithstanding Seller's obligation under Section 4.01, if there is a simultaneous issuance of an ALTA Owner's Policy and an ALTA Loan Policy, all charges and premiums for them shall be paid equally by the parties. If only an ALTA Loan Policy is issued, all charges and the premium for such policy shall be paid by Buyer.

16.04. Seller shall deliver to Buyer, without charge, any Abstract of Title in Seller's possession for the Real Estate.

Section 17. SURVEY. Seller shall provide and pay for a certificate of survey by an Indiana registered land surveyor, dated within 90 days prior to closing. The surveyor shall identify the location of corners by stakes on the Real Estate and by drawing on the survey. The survey shall also show: (a) the dimensions and the location of all improvements on the Real Estate; (b) building lines and easements affecting the Real Estate; and (c) the flood zone designation of the Real Estate, or whether or not the Real Estate is located in a flood hazard area.

Section 18. ADDITIONAL PROVISIONS REGARDING CONDITION OF REAL ESTATE. [Rev. 9/96]

18.01. Buyer's Right to Inspection.

- (a) Buyer may have the Real Estate inspected, and Seller agrees to make it and all of its systems available for that purpose. All inspections and complete written reports of them (except those required by a lender in connection with a mortgage loan) shall be made and delivered within 15 days after the date this Agreement becomes effective. Delivery of reports shall be made to Buyer in the same manner as notice is given under Section 22.02.
- (b) Inspections shall be at Buyer's expense by qualified, independent inspectors selected by Buyer. An inspector is considered "Independent" if the inspector is unrelated to the parties, and will not realize direct or indirect financial benefit (other than receipt of a fee for services rendered) as a result of performing an inspection. The inspections may include, but are not limited to, the following systems and items: electrical, gas, central heating, central air conditioning, and plumbing (including sewage disposal and sump pumps) systems; well; built-in appliances; roof; walls; ceilings; floors; foundations; basement; crawl space; hazardous or toxic substances, including radon and lead-based paint (Pre-1978); and wood eating insect infestation. Buyer may also have inspections of a septic system and the quality of water in a well on the Real Estate to determine whether they satisfy standards imposed by the Board of Health of the county in which the Real Estate is located. INSPECTIONS REQUIRED BY A LENDER DO NOT FULFILL BUYER'S RIGHT OF INSPECTION UNDER SECTION 18.01.
- (c) The purpose of inspections is to determine whether any system or item inspected has a "Major Defect". A "Major Defect" is a condition that would:
 - (1) have a significant, adverse effect on the value of the Real Estate; or
 - (2) significantly impair the health or safety of future occupants of the Real Estate; or
 - (3) significantly shorten or adversely affect the expected normal life of the Real Estate if not repaired, removed, or replaced.

If an inspection report reveals a Major Defect and Buyer wants it cured, Buyer shall give Seller a complete copy of the report within 5 days after

Section 4. EVIDENCE OF TITLE.

4.01. Seller shall provide and pay for an ALTA Owner's Policy, insuring in Buyer marketable title to the Real Estate as of a date after the date this Agreement becomes effective, in the full amount of the Purchase Price.

4.02. See Section 16 on the **reverse side** for additional provisions which apply here.

Section 5. ZONING.

5.01. Buyer's intended use of the Real Estate is street lighting department.

5.02. If at the time of closing such intended use is not permitted by the applicable zoning ordinance, Buyer may terminate this Agreement.

Section 6 IMPROVEMENTS AND FIXTURES. The Real Estate includes all improvements and permanent fixtures used in connection with it, including, but not limited to: electrical, gas, central heating, central air conditioning, and plumbing (including sewage disposal) systems, water softener(s), water heater(s), built-in appliances, screens, screen doors, storm windows, shades, blinds, drapery hardware, awnings, shutters, attached floor covering, radio or television antennas (but excluding any satellite receiving station or dish, components and wiring), garage door openers with all activators, attached shelving, trees, shrubs, flowers, fences, and the following items: N/A

now in or on the Real Estate (except rental units). Except for a mortgage on the Real Estate being assumed under Section 1.03, such improvements and fixtures shall have their cost fully paid and shall be free of liens as of the time of closing.

Section 7. CONDITION OF REAL ESTATE.

7.01. **Election by Buyer.** This Agreement contains IMPORTANT PROVISIONS set forth in Section 18 on the **reverse side**. By initialing below, Buyer selects which of Sections 18.01 or 18.02 is to apply. (Select ONLY ONE of the following; each person who is a Buyer must initial.)

(a) Buyer's right to inspection under Section 18.01. _____ [Initials of Buyer]

(b) WAIVER of defects and RELEASE of Seller — "AS IS" transaction under Section 18.02. _____ [Initials of Buyer]

7.02. **Maintenance.** See Section 18.03 on the **reverse side** for provisions which apply here.

7.03. **Survival.** The provisions of Section 18 agreed to by the parties shall survive closing.

Section 8. EARNEST MONEY. [Rev. 9/96]

8.01. At the time Buyer's offer is made and as part of it, Buyer has deposited the sum of \$ --- as earnest money. Within 20 days after this Agreement becomes effective, Buyer shall deposit the sum of \$ 5,000.00 as additional earnest money. If Buyer fails to do so, Seller may seek the remedies available under Section 14 and 20.

8.02. All earnest money deposited by Buyer under this Agreement shall be deposited with Seller's Listing Broker, or if there is none, then with Seller's Agent, or if there is none, the Buyer's Broker or Agent, and if there is none, then with Seller ("Holder"). By accepting earnest money, Holder agrees to be subject to and bound by the provisions of this Agreement regarding disposition of earnest money and remedies for a breach under it. Earnest money so deposited shall be held in escrow subject to this Agreement. If Holder pays earnest money as provided in this Agreement, there shall be no liability for having so held or paid it, and the PARTIES RELEASE Holder from any such liability. At closing, Buyer shall receive credit toward the Purchase Price for earnest money deposited. If this Agreement does not become effective, Holder shall return the earnest money to the Buyer.

8.03. **Disposition of Earnest Money.** After this Agreement becomes effective, and is subsequently terminated, and the earnest money should be disbursed, Holder shall send an authorization and release form ("Authorization") simultaneously to the parties designating the party to whom Holder intends to disburse the earnest money. Transmittal of the Authorization shall be pursuant to the provisions of Section 22.02. When Holder receives an executed Authorization from each party, Holder shall disburse the earnest money as provided in this section. If Holder fails to receive such an Authorization from each party within 7 days after Holder sends it, Holder shall have the option to:

- (a) Retain possession of the earnest money until Holder receives a written agreement signed by both parties, or receives the order of an arbitrator or an order of a court of competent jurisdiction directing disposition of the earnest money; or
- (b) As may be appropriate, either request arbitration between the parties, or commence suit requesting a court of competent jurisdiction to determine the party lawfully entitled to the earnest money, and to order deposit of the earnest money with the clerk, and excuse Holder from further responsibility for the earnest money.

8.04. Provided Holder complies with the terms of this Agreement, Holder's reasonable costs and expenses (including without limitation, court costs and attorney fees) shall be recoverable from the party who does not prevail in a contest for the earnest money. In the event of a settlement by the parties after the expiration of the 7 day period, then both parties shall be equally liable for Holder's said costs and expenses.

8.05. If a period of 90 days elapses from the date Holder sends an Authorization under Section 8.03, and Holder neither receives an executed Authorization from both parties, nor receives notice of the commencement of arbitration or suit to resolve any dispute regarding disposition of the earnest money, then Holder shall decide upon a plan of distribution of the earnest money, and shall give 30 day notice of such plan to the parties and a party's broker involved in the sale. Unless Holder receives notice in said 30 day period of the institution of arbitration proceedings or notice of filing of suit, Holder shall disburse the earnest money in the manner and to the persons designated in the notice. Thereafter, neither the parties nor the brokers shall have any further claims, actions or causes of actions against each other arising out of the disposition of the earnest money.

Section 9. CLOSING.

9.01. The closing date shall be on or before _____, 199____, subject to the provisions in Sections 19.01 and 23.05.

9.02. See Section 19 on the **reverse side** for additional provisions which apply here.

Section 10. POSSESSION, RENT, INSURANCE, UTILITIES AND SECURITY DEPOSIT. [Rev. 9/96]

10.01. Seller shall deliver possession of the Real Estate as marked below [if there is no mark "at closing" shall apply] [Mark one] ☒ (at closing); ☐ (within _____ days after closing)
☐ (by _____, 199____, provided closing occurs by such date; and if it does not, at closing). As rent for each day Seller is entitled to possession after closing under this Section 10.01, Seller shall pay to Buyer [Mark one]:

☐ no rent; or

☒ an amount equal to 1% of the Purchase Price divided by 30 and multiplied by the number of days Seller is entitled to possession after closing. Such rent shall be withheld from Seller's proceeds and paid or credited to Buyer at closing.

If neither box is marked, Seller's possession under this Section 10.01 shall be rent free.

10.02. If Seller fails to deliver possession as required by Section 10.01, Seller shall become a tenant at sufferance, and then become obligated to pay to Buyer an amount equal to 1% of the Purchase Price divided by 15, and multiplied by the number of days Seller retains possession under this Section 10.02.

10.03. Unless Seller and Buyer agree otherwise in writing, the amount payable under Section 10.02 shall be due on the date Seller delivers possession of the real estate. Failure of Seller to pay such amount when due constitutes a breach of this Agreement, and entitles Buyer to the remedies of Section 20.

10.04. Insurance shall be cancelled by the Seller as of the date of closing except for contents. Seller shall pay all charges for utility services furnished the Real Estate while Seller was in possession. Any rent due from a tenant of Seller on the Real Estate shall be prorated to the date of closing. At closing, Seller shall deliver to Buyer any lease agreement and security deposit then held for any such tenant and Buyer agrees to accept said security deposit and assume all responsibilities under the Indiana Security Deposit Statute (IC 32-7-5).

10.05. Buyer's remedies under Section 20 shall not be limited by the provisions in Section 10.02. Seller's obligations under Section 10 shall survive closing.

Section 11. AGREEMENT.

11.01. **Offer, Acceptance and Delivery.** By executing and delivering this Agreement, Buyer is making an offer to Seller. Buyer's offer expires at 11:59 P.M. (local time) _____, 199____, unless Seller timely accepts it. Any counteroffer shall be in writing. A party accepting an offer or a counteroffer shall do so in writing delivered to the other party or the party's broker or agent at or before the time the offer or the counteroffer expires.

11.02. **Copies of Documents.** A party making or accepting an offer or a counteroffer may do so by delivering a document signed by the party, or by delivering a carbon copy, a photo copy, or a facsimile copy of the signed document. If a copy is delivered, it must consist of the entire document. The person delivering a copy of a document (whether a party or a party's broker or agent) warrants and represents to the other party that, to the best of the person's knowledge and belief, the document (a copy of which is being delivered) contains the signature of the party whose document is delivered.

11.03. **Effectiveness of Agreement.** Upon timely and proper acceptance of an offer or a counteroffer, an agreement between the parties will become effective, and the parties will be bound. This Agreement shall continue in effect notwithstanding nonpayment by Buyer of additional earnest money due under Section 8.01 (if applicable).

11.04. **Incorporation of Terms.** The provisions in Sections 15 through 23 on the **reverse side** are incorporated by reference in, and are part of, this Agreement.

11.05. **Acknowledgment of Receipt.** By signing this Agreement, the parties acknowledge receipt of a copy of it.

receiving it, identifying either on the copy or in a separate document delivered with the copy the Major Defect(s) Buyer wants cured. Within 10 days after such copy or document is delivered, Seller shall give Buyer a notice identifying which of such Major Defect(s) (all, some or none — to be stated in the notice) Seller is willing to cure. If Seller responds that Seller is willing to cure only some or none of the Major Defect(s) Buyer wants cured, Buyer shall have 5 days after receipt of the response within which to accept or reject the response. If the inspection report recommends further inspection be performed, such inspections shall be at Buyer's expense. Each Major Defect Seller undertakes to cure shall be cured to Buyer's reasonable satisfaction, and before closing — or at another time agreed to by the parties.

Delivery of reports shall be made to Seller in the same manner as notice is given under Section 22.02.

- (d) Subject to Section 18.01(f), either party may terminate this Agreement if: (1) Seller states in the response under (c) above that Seller will not cure all Major Defect(s) Buyer wants cured, or (2) Buyer rejects the response under (c) above, or (3) either party fails to act timely as the party is required under this Section 18.01(c).
- (e) Neither of the parties shall have the right to terminate this Agreement if the Major Defect is one which Buyer has acknowledged and agreed to accept in this Agreement.
- (f) **WAIVER:** If Buyer fails to timely obtain the inspection and the report described in Section 18.01(a), or fails either to timely give Seller a complete copy of the inspection report or to timely identify each Major Defect Buyer wants cured, Buyer shall be deemed to have WAIVED Buyer's right to have an inspection (together with a report on it), or to have Seller cure any Major Defect disclosed by the inspection. In such event, neither Seller nor Buyer may terminate this Agreement under Section 18.01.

18.02. WAIVER of Defects and RELEASE of Seller— "AS IS" Transaction.

- (a) Buyer acknowledges that Buyer has had the opportunity to require, as a condition of this Agreement, that the inspections described in Section 18.01 be made, and that Section 18.01 apply. BUYER WAIVES THE RIGHT TO HAVE SUCH INSPECTIONS AND TO HAVE Section 18.01 APPLY, and instead relies upon Buyer's own examination. BUYER FURTHER RELEASES SELLER FROM ANY AND ALL LIABILITY RELATING TO ANY DEFECT OR DEFICIENCY AFFECTING THE REAL ESTATE, and agrees to purchase the Real Estate "AS IS."
- (b) Inspections required by a lender in connection with a mortgage loan are not included in this waiver.

18.03. Maintenance

- (a) Until Seller delivers possession of the Real Estate to Buyer, Seller shall maintain it in the same condition as existed:
 - (1) [if Section 18.01 applies] at the later of the time: (A) of Buyer's last inspection made under Section 18.01(a); or (B) when all defects revealed by inspection reports properly obtained by Buyer are cured by Seller, if required by this Agreement.
 - (2) [if Section 18.02 applies] at the time of Buyer's last examination before this Agreement became effective.
- (b) Prior to closing, Buyer may inspect the Real Estate to determine whether Seller has complied with Section 18.03(a).
- (c) The failure of Seller to so maintain the Real Estate shall be considered a breach of this Agreement. However, Buyer shall have no claim against Seller for a failure to properly maintain the Real Estate if the reasonable cost of repairing or restoring it to the condition applicable under Section 18.01(a) is less than \$100, payment of which cost is Buyer's obligation. If such cost is \$100 or more, Seller shall pay the excess cost over Buyer's obligation.

Section 19. ADDITIONAL PROVISIONS REGARDING CLOSING.

19.01. Closing shall be held on the later of: (a) the date stated in Section 9.01; or (b) the date all conditions imposed by this Agreement are satisfied [for example, title requirements are met, financing is available (if applicable), and surveying is completed]. The time and place of closing shall be agreed to by the parties in good faith. The closing agent or lender may, for its convenience or accommodation, extend the closing date for not more than 7 days, provided that the extension does not cause the Commitment to expire. Upon payment of the Purchase Price in accordance with Sections 1.01, 1.02, 1.03, or 1.04(b) (whichever is applicable), Seller shall deliver a properly executed general warranty deed ("Deed") conveying the Real Estate to Buyer. If the Real Estate is being purchased under a Contract, or a Note and Mortgage, the applicable document(s) shall be executed and delivered at closing, as provided in Section 1.04.

19.02. Seller shall provide and pay for the Deed, or the Contract or any Note and Mortgage required under Section 1.04(b), and all other documents which are necessary for title to the Real Estate to meet legal requirements under this Agreement, for the transaction to comply with applicable tax laws, and comply with the Indiana Responsible Property Transfer Law (IC 13-7-22.5).

19.03. In each case of delivery of a Deed by Seller, whether at closing or upon payment in full of a Contract, Seller shall also execute and deliver a Closing Affidavit and Representations ("Closing Affidavit") in the form approved by The Allen County Indiana Bar Association, Inc. at the time of delivery. If the Real Estate is being purchased under a Contract and Buyer requests a Closing Affidavit, Seller shall provide and pay for one at that time.

19.04. Upon Buyer's written request (made by notice given before or at closing), Seller shall also provide and pay for a certification of non-foreign status under the Foreign Investment in Real Property Tax Act of 1980 (Pub.L. 93-479), as amended, ("FIRPTA") (see 26 U.S.C. §1445) and regulations under it. If such certification is not so provided, Buyer may withhold from Seller's proceeds any tax due under FIRPTA.

19.05. If this transaction is not closed for failure of title to meet legal requirements, or for failure of Seller to convey by Deed as required, or to execute and deliver a Contract, or other document as required, in each case as of the time of closing, Buyer may terminate this Agreement, and also pursue appropriate remedies available under Section 20.

19.06. If this transaction is not closed because of Buyer's breach of this Agreement, or because Buyer or Buyer's Broker gives notice to, or otherwise informs Seller, the Listing Broker, or any agent of Seller, that Buyer does not intend to purchase the Real Estate, Seller may terminate this Agreement, and pursue appropriate remedies available under Sections 14 and 20.

19.07. Seller shall bear risk of loss and damage to the Real Estate until the time of closing, and Buyer shall bear such risk after such time.

19.08. The fee charged by any closing agent (including an attorney acting as a closing agent for both parties, or Buyer's lender acting in such capacity) for closing services shall be paid equally by the parties, except Seller shall pay such fee if required by law. Any professional service fee (commission) due Broker under a Listing Agreement signed by Seller or a Buyer Brokerage Agreement signed by Buyer shall be withheld and paid by the closing agent at closing, as provided by said Listing Agreement or Buyer Brokerage Agreement or as provided in this Agreement.

Section 20. ADDITIONAL PROVISIONS REGARDING REMEDIES OF PARTIES.

20.01. If Buyer breaches this Agreement, and the amount in controversy is greater (in the aggregate) than \$3,500, Seller shall be entitled to file suit in a court of competent jurisdiction to recover in addition to any remedies available under this Agreement, all reasonable costs and expenses, including attorney fees, incurred by Seller due to Buyer's breach.

20.02. If Seller breaches this Agreement, and the amount in controversy is greater (in the aggregate) than \$3,500, Buyer shall be entitled to file suit in a court of competent jurisdiction to recover in addition to any legal and equitable remedies available (including specific performance), all reasonable costs and expenses, including attorney fees, incurred by Buyer due to Seller's breach.

Section 12. OTHER PROVISIONS: This agreement is subject to the approval by the common council of
the City of Fort Wayne

Section 13. BROKERAGE RELATIONSHIP AND DISCLOSURE FORM.

Section 13.01. Confirmation of Brokerage Relationship. (Completion of this section requires prior execution of appropriate disclosure form(s).) The following brokerage relationship(s) is/are confirmed for this transaction: (PLEASE PRINT):

LISTING FIRM: _____	SELLING FIRM: _____
BROKER / ASSOCIATE: _____	BROKER / ASSOCIATE: _____
Telephone No.: _____	Telephone No.: _____
<input type="checkbox"/> is the broker of (Mark one): <input type="checkbox"/> Seller exclusively; or <input type="checkbox"/> both Buyer and Seller	(If not the same as Listing Firm) is the broker of (Mark one): <input type="checkbox"/> Buyer exclusively; or <input type="checkbox"/> Seller exclusively; or <input type="checkbox"/> both Buyer and Seller

Section 13.02. Seller's Residential Real Estate Disclosure Form. [Mark one]

- ☐ Buyer acknowledges receipt and execution of a Seller's Residential Real Estate Disclosure Form required under IC 24-4.6-2, as amended.
☐ Buyer has not received an executed Seller's Residential Real Estate Disclosure Form required under IC 24-4.6-2, as amended.
☐ Seller's Residential Real Estate Disclosure Form is not applicable to this transaction.

Section 14. REMEDIES OF PARTIES.

14.01. If this Agreement becomes effective and Buyer, having no right or option to terminate this Agreement, fails to complete the purchase as provided in this Agreement, Buyer shall pay to Seller, as liquidated damages and not as a penalty, an amount equal to the greater of five percent (5%) of the Purchase Price, or the earnest money deposited by Buyer ("Damages"). Other than the remedies available under Section 20, Seller shall then have no other remedy against Buyer at law or in equity. Earnest money deposited shall be credited against the Damages.

14.02. Mandatory Arbitration. All claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach of it concerning amounts in controversy that do not exceed in the aggregate \$3,500 shall be submitted to binding arbitration as provided in Section 20. By signing this Agreement, the parties agree to binding arbitration in accordance with the provisions of Sections 14 and 20.

14.03. See Section 20 on the reverse side for additional provisions which apply here.

Buyer: <u><i>Janey McCall</i></u> (Signature) _____ (Printed or Typed Name and Tax I.D. Number)	Buyer: _____ (Signature) <u><i>Linda Buskirk</i></u> Linda Buskirk _____ (Printed or Typed Name and Tax I.D. Number) Director, Dept of Public Works
Address: <u><i>James</i></u>	Telephone: _____

CITY OF FORT WAYNE

UNCONDITIONAL ACCEPTANCE BY SELLER

Seller accepts the offer made by Buyer as set forth above, without change or condition. Dated: _____, 199____

Seller: _____ (Signature) _____ (Printed or Typed Name and Tax I.D. Number)	Seller: _____ (Signature) _____ (Printed or Typed Name and Tax I.D. Number)
Address: _____	Telephone: _____

CONDITIONAL ACCEPTANCE BY SELLER [Counteroffer]

Seller accepts the offer made by Buyer, SUBJECT, HOWEVER, TO THE FOLLOWING PROVISIONS:

This counteroffer expires at 11:59 P.M. (local time), _____, 199____. Dated: _____, 199____

Seller: _____ (Signature) _____ (Printed or Typed Name and Tax I.D. Number)	Seller: _____ (Signature) _____ (Printed or Typed Name and Tax I.D. Number)
Address: _____	Telephone: _____

BUYER'S ACCEPTANCE OF SELLER'S COUNTEROFFER

Buyer accepts and agrees to the provisions set forth in Seller's counteroffer. Dated: _____, 199____

Buyer: _____ (Signature)	Buyer: _____ (Signature)
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EARNEST MONEY (Section 8 applies.)

Received \$ _____ as earnest money on _____, 199____. _____
(Signature of Holder)

Received \$ _____ as additional earnest money on _____, 199____. _____
(Signature of Holder)

20.03. The following are provisions for arbitration:

- (a) The parties agree that the arbitrating agency ("Arbitrator") shall be the Better Business Bureau of Northeastern Indiana, Inc. ("BBB"). However, if BBB is not able to conduct arbitration because it does not operate in a county where the Real Estate is located, but another Better Business Bureau operates there, that Better Business Bureau shall be the Arbitrator, unless the parties agree on another arbitrator or arbitrating agency.
- (b) If a party believes in good faith that the aggregate amount in controversy exceeds, or is likely to exceed, the monetary limit specified in Section 14.02, that party, as the objecting party, shall give the Arbitrator and the other party, notice to that effect. Each party may then give the Arbitrator (with a copy given to the other party) documents or writing to support the position of a party, within such time limits as the Arbitrator may impose. The Arbitrator will determine whether the aggregate amount in controversy is, or is likely to be, within the monetary limit specified in Section 14.02. The Arbitrator's determination of the amount in controversy shall not be binding upon the parties, and may be the subject of a declaratory judgment action in any court having jurisdiction of the controversy. If a party desires to contest the Arbitrator's determination of the amount in controversy, the parties shall file a declaratory judgment action in a court of competent jurisdiction within fifteen (15) days of the date the Arbitrator gives notice to the parties of such determination. If such action is not filed timely, the parties shall waive their right to contest the Arbitrator's determination.
- (c) If it is determined that the amount in controversy exceeds, or is likely to exceed, the monetary limit specified in Section 14.02, either party may withdraw from arbitration. However, both parties may consent in writing to arbitration, in which case the provisions of Section 20.03(j) shall not apply.
- (d) A party begins the process of arbitration by giving, to the other party and to the Arbitrator, a notice briefly stating the party's claim, the grounds for it, and the aggregate amount in controversy.
- (e) Such notice is a request to start arbitration. Because this Agreement contains an agreement for binding arbitration as to matters within the monetary limit specified in Section 14.02, no party may reject arbitration for failure to agree on the issues, or for failure to sign an agreement with the Arbitrator.
- (f) If a party seeks an award which includes: (1) loss of wages; (2) damages for personal injury or mental anguish, or both; (3) punitive damages; (4) consequential damages; or (5) any other element of damages; that party shall give, to the other party and to the Arbitrator, a notice to that effect. The notice shall state the amount claimed for each item for which an award is sought. An award cannot exceed the total amount sought by a party.
- (g) The Arbitrator shall conduct arbitration according to its rules, but subject to the Indiana Uniform Arbitration Act (IC 24-4-2), if the Real Estate is located in Indiana, or to an act or statute on arbitration of another state in which the Arbitrator operates and the Real Estate is located. In case of any conflict between rules of the Arbitrator and applicable legislation, the applicable legislation controls.
- (h) The purpose of arbitration is to resolve disputes within the monetary limit specified in Section 14.02; and to provide for enforcement of the award by a court, if necessary, by its entering judgment on the award as authorized by applicable legislation.
- (i) The parties shall share equally the cost of the arbitration process as determined under the rules of the Arbitrator. If by reason of membership in the Arbitrator or other affiliation with it, a party is not responsible for such cost, the other party shall pay its own share of such cost.
- (j) In the arbitration process the Arbitrator shall neither award attorney fees nor allocate between the parties any other costs or expenses incurred by a party in the arbitration process. Each party shall be responsible for fees, costs or expenses incurred by such party, including fees, costs or expenses of legal counsel representing such party.

20.04. The provisions in Section 20.03 shall not affect the provision for recovery of fees and expenses of the Holder of earnest money as provided in Section 8.04.

20.05. The obligations of a party breaching this Agreement, and the rights of the other party to the remedies provided, shall survive this Agreement.

Section 21. RELEASE OF BROKERS. Except for a material misrepresentation made by a broker acting in the capacity as a Seller's Broker, Subagent, Buyer's Broker or Limited Agent, the PARTIES RELEASE each such person from liability from any defect or deficiency now existing or later discovered relating to the Real Estate, and all systems, appliances or equipment on it. These provisions shall survive closing.

Section 22. MANNER OF TERMINATING THIS AGREEMENT AND NOTICE.

22.01. If either party wishes to terminate this Agreement pursuant to an option to do so granted by this Agreement, a party shall give notice of termination, stating with reasonable detail the basis for termination. The termination shall become effective on the fifteenth day after the date notice is given, unless on or before that day: (a) the defect or default stated in the notice is cured; (b) the party having the option to terminate gives notice to the other party of either a WAIVER of the condition or contingency upon which such option is based, or an EXTENSION of the time within which such condition or contingency is to be performed or satisfied; or (c) Buyer gives Seller notice that Buyer will pay the Purchase Price without regard to the manner of payment stated in Sections 1.02 and 15.01, or Sections 1.03 and 15.02.

22.02. Any notice provided under this Agreement shall be in writing and given to the other party at the party's address stated in this Agreement, or to the party's broker at the broker's principal place of business, or at such other address as a party may designate in a notice. Notice shall be deemed given when: (a) personal service of the notice is made on the party to be notified; (b) the notice is mailed to the party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid; or (c) the notice is sent to the party to be notified by express courier, or such other similar carrier guaranteeing next day delivery.

22.03. Refusal by a party to accept delivery of a notice (whether by mail or otherwise) cannot defeat the giving of a notice.

Section 23. MISCELLANEOUS.

23.01. This Agreement shall bind, and inure to the benefit of, the parties and their heirs, personal and legal representatives, successors and assigns, and shall be interpreted under the laws of the State of Indiana.

23.02. Time is of the essence of this Agreement.

23.03. Headings are for reference only, and do not affect the provisions of this Agreement. Where appropriate, the masculine gender shall include the feminine or the neuter, and the singular shall include the plural.

23.04. This Agreement contains all of the agreements of the parties, all prior negotiations, understandings and agreements having been merged into it. Amendments of this Agreement shall not be effective unless made in writing and signed by the parties.

23.05. In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening week end days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday as defined under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or a legal holiday, except that such extension shall not be made for the day possession is to be delivered under Section 10.01.

23.06. Representations, warranties and agreements contained in this Agreement or in any notices, schedules, certificates, or statements delivered pursuant to this Agreement shall survive it, and shall remain in full force and effect, notwithstanding termination of this Agreement or a closing held under it.




The City of Fort Wayne

Paul Helmke, Mayor

MEMORANDUM

DATE: November 22, 1996

TO: Members of City Council

FROM:  Ann Smith, Associate Director, Division of Public Works

SUBJECT: Purchase of Real Estate Property at 325 Murray Street

* * * * *

Attached is a resolution regarding the City's purchase of real estate property located at 325 Murray Street.

Two appraisals were received for said property; one at \$195,000 and the second at \$190,000. The purchase price for the property will be the average of the two appraisals or \$192,500.

The property will be used for relocation of the City's Street Light Maintenance Department in accordance with Wallace/Lafayette Master Plan, March 1996.

DIGEST SHEET

TITLE OF ORDINANCE RESOLUTION

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

SYNOPSIS OF ORDINANCE APPROVES THE PURCHASE OF PROPERTY AT 325 MURRAY STREET
FOR THE RELOCATION OF THE CITY OF FORT WAYNE STREET LIGHT MAINTENANCE
DEPARTMENT.

EFFECT OF PASSAGE PROPERTY MAY BE PURCHASED.

EFFECT OF NON-PASSAGE PROPERTY CANNOT BE PURCHASED.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$192,500.00

ASSIGNED TO COMMITTEE (PRESIDENT) _____

Read the first time in full and on motion by Crawford,
and duly adopted, read the second time by title and referred to the
Committee on Finance (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne,, Indiana, on _____, 19____, the _____ day of _____
_____ N., E.S.T.

DATED: 11-26-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Crawford,
and duly adopted, placed on its passage. PASSED POST
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT:
TOTAL VOTES	9			
BENDER	✓			
CRAWFORD	✓			
EDMONDS	✓			
HALL	✓			
HAYHURST	✓			
HENRY	✓			
LUNSEY	✓			
RAVINE	✓			
SCHMIDT	✓			

DATED: 12-3-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 09-84-96
on the 3rd day of December, 19 96

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

DD Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 4th day of December, 19 96.
at the hour of 11:45 o'clock PM, M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 5th day of December,
19 96, at the hour of 3:30 o'clock PM, M., E.S.T.

Paul Heimke
PAUL HEIMKE, MAYOR

BILL NO. R-96-11-38

REPORT OF THE COMMITTEE ON
FINANCE
THOMAS C. HENRY - JOHN N. CRAWFORD - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (~~ORDINANCE~~) (RESOLUTION) approving the purchase of
certain real estate for the City of Fort Wayne Street Light Maintenance
Department

HAVE HAD SAID (~~ORDINANCE~~) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(~~ORDINANCE~~) (RESOLUTION) _____

DO PASS

DO NOT PASS

ABSTAIN

NO REC

John N. Crawford

Thomas C. Henry

Robert E. Hayhurst

Robert E. Harris

W. Edgar Hefel

Julius J. Jones

Thomas C. Kennedy

D. J. Schum

DATED: 12-3-96

Sandra E. Kennedy
City Clerk